

## Appendix B: Staff Replies to Delaware Riverkeeper Petition

The petitioner specifically asked:

1. *That the entire reach of Delaware River main stem from River Mile 209.5 (downstream boundary of the Delaware Water Gap National Recreation Area) to River Mile 133.4 (Head of Tide) be designated as a Special Protection Water;*

DRBC Staff Reply: Agree.

2. *That those sections of the proposed Special Protection Waters that are now components of the National Wild and Scenic Rivers System due to the enactment of Public Law 106-418 cited as the "Lower Delaware Wild and Scenic Rivers Act", be classified by the Commission as Outstanding Basin Waters;*

DRBC Staff Reply: Lower Delaware waters possess exceptionally high scenic, recreational, ecological, and water supply values that require special protection. Outstanding Basin Waters should be adopted for segments of the river that are components of the National Wild and Scenic Rivers system. However, it may not be safe, logical, feasible or economically practical to manage water quality strictly according to segmentation of the river as identified in the legislation. DRBC staff are presently evaluating feasibility of three management alternatives favored by various members of the Water Quality Advisory Committee:

- a. Significant Resource Waters for whole Lower Delaware, raise protection to Outstanding Basin Waters in eligible segments once the process of Scenic Rivers inclusion is completed by NPS in 2005.
  - b. Declare all segments of the Delaware River from Gilbert Generating Station to Trenton as Outstanding Basin Waters, and all segments from the Delaware Water Gap to the Gilbert Generating Station as Significant Resource Waters.
  - c. Strictly adhere to declaration of Outstanding Basin Waters where segments are included in the Scenic Rivers system, and Significant Resource Waters in all other segments.
3. *That those sections of the proposed Special Protection Waters that are not components of the National Wild and Scenic Rivers System be classified by the Commission as Significant Resource Waters;*

DRBC Staff Reply: Significant Resource Waters would be the most appropriate form of protection for the Lower Delaware River in segments not designated in the legislation.

4. *That the Commission adopt the Lower Delaware River Management Plan, as cited in Public Law 106-418 and dated August 1997, into its Comprehensive Plan as provided for in Compact Section 3.1;*

DRBC Staff Reply: The Commission endorsed the Lower Delaware Management Plan in 1998. The Management Plan should be reviewed for consistency with DRBC's Basin Plan before adoption into its CP.

5. *That the Commission, in cooperation with the States of New Jersey and Pennsylvania, initiate the development of the bi-state water quality management plan called for in the Lower Delaware River Management Plan, said plan to be focused on preserving and/or improving existing water quality;*

DRBC Staff Reply: Agree. DRBC and States should enter into formal cooperative agreements for this purpose. Site specific water quality targets will only be as strong as state and local recognition of such targets.

6. *That the Commission make the development of the bi-state water quality management plan for the Lower Delaware River a specific and high priority task of its pending Comprehensive Planning activity; and*

DRBC Staff Reply: Lower, Middle and Upper Delaware SPW should be part of such planning within the context of a single Scenic Rivers Program. The entire non-tidal river should be holistically managed and monitored.

7. *That the Commission adopts interim measures during the third quarter of 2001 that protect existing water quality from changing in the Lower Delaware while all necessary planning is being conducted. These measures should include interim definitions of existing water quality derived from all currently available data and effluent requirements based upon Best Demonstrable Treatment technology or facsimile as defined in the Special Protection Waters regulations.*

DRBC Staff Reply: Interim Special Protection Waters measures are appropriate using the site-specific targets in Appendix B from the Technical Water Quality Report's 2000-2003 data set. These may be used along with SPW effluent requirements to protect EWQ until final targets are created using the 2000-2004 data set. However, it may be wise to avoid confusion between interim and final targets, and issue only final targets when all 2000-2004 data become available by the end of 2004.

Furthermore, the petitioner requested:

8. *That the Commission comply with Section 3.10.3A.2e.3) of its regulations. This section of the Commission's water quality standards required the Commission to prioritize watersheds in the currently designated Special Protection Waters drainage area (Middle and Upper Delaware) by February 1996. The petitioner noted that this deadline was not met. Priority watersheds are watersheds where non-point source control plans were to be developed by the Commission no later than 2001. This deadline was not met either. The petitioner suggested that the February 1996 deadline be extended by Commission action to a date in 2003 that corresponds to the release of a draft new or updated Comprehensive Plan and that said plan contain the information and recommendations required by Section 3.10.3A.2e.3).*

DRBC Staff Reply: The Basin Plan has not yet been incorporated into DRBC's upcoming new Comprehensive Plan. The Basin Plan does not list priority watersheds. Based upon water quality findings in the Middle and Upper Delaware, the following watersheds should be considered "priority watersheds:"

- § Upper Delaware: Callicoon Creek, Lackawaxen River
- § Significant Resource Waters: All tributaries and direct drainage areas to the Tri-State segment of the Upper/Middle Delaware, including the Neversink River in New York.
- § Middle Delaware: Bushkill Creek; Brodhead Creek

9. *That the Commission prioritizes the watersheds draining to the Lower Delaware River simultaneously with its prioritization of upper basin watersheds. This prioritization is necessary for the development of the bi-state water quality management plan as described above. Moreover, performing the prioritization activity as part of an overall Comprehensive Planning process insures that all future activities are directed at the highest priorities.*

DRBC Staff Reply: Table 5 on Page 19 shows priority tributaries based upon water quality ranks for designated uses. Prioritization was completed entirely based upon water quality results and significant tributary effects upon Delaware River EWQ. The lists may be revised as additional information becomes available.

Lastly, the petitioner suggested:

10. *That the Commission's Comprehensive Planning program consider using the Special Protection Waters boundary and interstate control point approach as its basic framework for developing policies and managing all water resource issues in the Basin – to the extent applicable. The control point approach establishes specific goals, objectives, and measures of success on an individual watershed and location basis as well as at Basin level. This allows specific goals and objectives to be established, distinct priorities and activities to be developed, and explicit actions to be assigned to specific organizations and agencies rationally within an overall Delaware River Basin planning context.*

DRBC Staff Reply: The control point approach serves water quality management very well. The National Park Service also requested that DRBC use the control point approach for the Upper and Middle Delaware Special Protection Waters regions. Using this approach, DRBC will be able to relate management activities directly to their measurable effects upon the Delaware River. This should allow the agency to better focus efforts upon what really matters – measurable results that benefit the river. For these reasons, DRBC staff members have already begun to integrate the control point method into all non-tidal water quality management activities. Closer cooperation between partners can strengthen results dramatically by focusing all agencies on specific measurable targets.